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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Parts 0 and 1 of the) RM-9150
Commission's Rules to Improve the)
Procedures for Addressing Serious)
Rule Violations in the Amateur)
Radio Service, and to Create a)
Private Sector Complaint Procedure)

To: The Commission

REPLY COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE,
INCORPORATED

The American Radio Relay
League, Incorporated

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REPLY COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

The American Radio Relay League, Incorporated (the League), the national association of amateur radio operators in the United States, and the petitioner in the captioned proceeding, by counsel and pursuant to Section 1.405(b) of the Commission's Rules [47 C.F.R. §1.405(b)] hereby respectfully submits its reply to certain of the comments filed in response to the above-referenced Petition for Rule Making (the Petition). The League has reviewed twenty-one comments submitted by individual radio amateurs, or groups of radio amateurs, regarding the Petition. All but two express support for a privatized enforcement procedure such as that suggested by the League. Given the positive support reflected in the comments generally, the League reiterates its request that the Commission issue a Notice of Proposed Rule Making without delay, proposing to amend Parts 0 and 1 regulations as necessary to create a streamlined, privatized complaint procedure to address instances of malicious interference in the Amateur Radio Service. The support for the League's Petition found in the comments establishes both the need for a procedure similar to that proposed in the Petition, and a willingness on the part of the Amateur Radio community to do even more than it has for years in policing its own bands, provided that it has the procedural tools to do so. For its reply comments, the League states as follows:

I. Introduction

1. The comments were strongly supportive of the petition. Most simply indicated that instances

of serious rule violations are becoming a serious issue in the Amateur Service, and acknowledged that the Commission is not able to respond promptly, or at all, in most such cases. This reflects what the League perceives as the typical response to problems, and the character, of licensed radio amateurs generally: they are rule compliant to a fault, and are most intolerant of disruption of the public service and public safety communications that they conduct. The service they provide is taken very seriously. There is simply no room in the Amateur Service for the disruption caused by malicious interference. As stated in the comments of Robert E. Nelson, N5EW:

For any radio service to remain useful it must exist within a structure of rules. Further, there must be an expectation that serious violations of these rules will quickly and surely result in corrective measures. The Amateur Radio Service is remarkably compliant but is not without its problems. From time to time, aggressive enforcement is needed and for various reasons the government is not positioned to provide it. This proposal provides a structure for the Amateur Radio Service to do much of the work of taking these actions itself and I strongly support it.

2. Some of the comments supported the petition, but felt that the League's proposal did not go far enough in dealing with compliance issues. Mr. Anthony Amato, KR4UQ, felt that that repeated indecent or obscene language instances on the air should be included in the category of serious rule violations that might be addressed through a private complaint procedure. The Keller Peak Repeater Association strongly urged that entities in addition to members of the Amateur Auxiliary to the Commission's Compliance and Information Bureau should be able to prepare and submit cases directly to the Chief Administrative Law Judge (ALJ) for a determination whether submitted evidence constitutes a *prima facie* case which might be designated for hearing.

3. There were but two comments which opposed the privatized enforcement concept proposed by the League. The comments of Karl A. Kopetsky, K9AQJ suggest variously that administrative hearing locations would have to be in the District of Columbia, thus making presentation of a case difficult; that there are "extensive legal duties" forced on the Amateur Auxiliary members who will assemble the case in chief; and that, because there are not envisioned a large number of hearings

based on private sector complaints, adequate rules and procedures already exist in the rules and statutes to address serious rule violations in the Amateur Service. The other opponent of the petition, Henry Ruh, KB9FO, suggests in essence that there is no need for a private sector complaint procedure to address a relatively small number of instances of malicious interference; that the League cannot financially afford to sustain a program such as this; and he expresses concern about the possibility of complaints against amateurs based on other than objective criteria.¹

4. The League is gratified at the substantial support of the Petition, and believes its proposal, though perhaps subject to some adjustment in implementation details, offers a reasonable solution to a serious problem that otherwise evades solution. The level of enforcement in the Amateur Service is currently unacceptable and must be addressed more effectively, and it would appear that the source of any increased enforcement effort must be based on volunteer service, since no other source exists at the moment. Volunteer service in rule compliance matters is presently authorized by the Communications Act of 1934, as amended, and the Commission has implemented an agreement with the League to accept the services of the Amateur Auxiliary program. This is not exclusive: the Commission can accept volunteer service in the same context from other amateur groups as well. The Amateur Auxiliary is in place, and its volunteers have received the benefit of self-training from the League. It is believed that the Amateur Auxiliary members have positive, ongoing working relationships with the residual Commission field office staff. The League has committed to providing adequate support for its Amateur Auxiliary members in preparing and presenting the few cases that must go forward for formal adjudication. The structure and organization of the program, and the procedural safeguards proposed in the petition, should be adequate to provide objective, professional preparation and submission of evidentiary materials without fear of personal prejudices and

¹ The League will offer Mr. Ruh's comments the benefit of the doubt. Amidst unsubstantiated and largely illogical allegations aimed at the League and others *ad hominem*, and irrelevancies, Mr. Ruh manages to at least identify some issues worth addressing.

influences.

II. The Amateur Auxiliary as the Complainant

5. The comments in this proceeding generally supported the use of the volunteer Amateur Auxiliary as the means of gathering evidence of malicious interference, identifying the perpetrator, and the preparation and submission of *prima facie* cases to the Chief Administrative Law Judge (through the League) for adjudication. The Keller Peak Repeater Association suggests, however, that the private sector complaint process should be available to anyone who wishes to prepare such materials and submit such a complaint. The basis for the League's suggestion that all cases be submitted through the Amateur Auxiliary is that, first, there is already in place a workable field organization for the purpose. Members of the Amateur Auxiliary would function as they do now: in the role of evidence-gathering entity within the Amateur Radio Service. Though that is not the principal function of the Amateur Auxiliary, its goal and function is to encourage voluntary compliance, and to document instances of rule violations. The League's sponsorship of the Amateur Auxiliary, and the self-training of those volunteers, makes them the appropriate entities to prepare evidentiary materials. Members of the Amateur Auxiliary are in a better position to monitor, detect, and document instances of malicious interference, and to identify the source of those violations, than are amateurs generally. The larger reason for limiting the submission of private sector complaints to the Amateur Auxiliary, however, is to deter frivolous complaints, complaints submitted by individuals based on pre-existing ill-will between radio amateurs unrelated to on-air behavior of the accused, or through a misunderstanding of the elements of a rule violation. As the Petition stated, at page 22, there are three factors that would discourage the filing of frivolous complaints: (1) the requirement of a determination of a *prima facie* case by the Chief ALJ before the Commission even contacts the accused; (2) the limitation of the process to malicious interference cases only, the most serious rule violation in the Amateur Service; and (3) the cases are to be presented only by the Amateur

Auxiliary, with which the Commission has an agreement in place and operational. Amateur Auxiliary members who have any individual involvement in the case are not to be involved in preparation of the evidentiary submissions.² The Keller Peak Repeater Association's argument in favor of broadening the program to permit anyone to submit a complaint is based largely on its own experience in a long-pending enforcement matter in southern California (which is and has indeed been a serious matter). It does not, however, address the broader concerns applicable to the process, and the integrity of a private complaint procedure.

6. Conversely, Henry Ruh's comments raise the concern of vigilante action of Amateur Auxiliary members in bringing cases to the Administrative Law Judges for adjudication. What his argument misses, however, is that, unless the evidence submitted to the Chief Administrative Law Judge is clear and convincing enough in each case, the case will never go forward and the accused will never even be contacted by the Commission. The petition does not propose that the Amateur Auxiliary, or the League, adjudicate or make findings on any issue of fact or draw conclusions of law. That is solely for the ALJs, as is their function now. In each case brought, the Wireless Telecommunications Bureau, and the Compliance and Information Bureau, would automatically become party or parties to the proceeding, participating in the cases as they deem appropriate. They would obviously be sensitive to any allegation that a complaint was brought for less than objective reasons. The procedural safeguards inherent in the process, and especially in the hearing proceeding itself, are sufficient to protect any licensed amateur against false biased accusations. Ruh and Kopetsky raise issues of the layman status of Amateur Auxiliary members, but the auxiliary members are not the triers of fact; they merely substitute for the Commission's evidence gatherers and presenters. The League's professional staff will assist in the presentation of the cases, and the Amateur Auxiliary members would merely be available for any necessary cross-examination, and to

² See Exhibit B to the Petition, the "Update", at page 1.

substantiate their case preparation.

III. The Role of the Chief Administrative Law Judge

7. The League's Petition proposes to allow Amateur Auxiliary members to directly present evidence of malicious interference to the Commission's Chief Administrative Law Judge (ALJ). The comments filed are strongly supportive of this procedure. The Chief ALJ would determine if the evidentiary material states a *prima facie* case. The proposal is that the Chief ALJ, upon finding that the complaint and supporting evidentiary material is sufficient on its face, would issue show-cause orders and designate complaints for administrative hearing. In discussions with Commission staff about the proposal, this portion of it has apparently caused some misunderstanding, and requires explanation. It is not the League's intention that the Chief Administrative Law Judge assume any prosecutorial role or function *whatsoever* in this process. Rather, the concept is that the Chief ALJ would make the "go-no-go" decision on a particular case in the same manner as does a Federal Magistrate in a probable cause determination. The Chief ALJ's job would be to evaluate evidence and decide only whether the case should go forward to hearing or not. The issuance of a show-cause order would be, in this context, a ministerial function, not a prosecutorial function, after a finding that the evidence is sufficient to justify contacting the accused and offering an opportunity for a hearing before an ALJ on the proffered evidence. There would be no advocacy role on the part of the Chief ALJ *whatsoever*; he or she would be merely an evidentiary "gatekeeper".

8. The "prosecutorial effort" would be the preparation and submission of the documentary evidence and the availability of those members of the Amateur Auxiliary to sponsor the evidence as a direct case exhibit, and to be available for cross-examination by the accused, or his or her attorney. As repeatedly noted, the League's professional staff would assist in the preparation and presentation of the evidence, so that the Amateur Auxiliary members would not, as Kopetsky fears, be given the

role of attorney.³ It is noted in the comments that the amount of documentation required to bring a case before the ALJ would limit proceedings to the most serious cases, and it is anticipated that the number of cases per year would not be substantial. Indeed, a major goal is to increase the deterrence value of the cases brought, which, over time, will insure that only a minimal amount of actual enforcement is necessary. The proposed system streamlines the existing structure, allowing for timely and effective enforcement of current rules.

IV. Conclusions

9. As to the objections of Kopetsky and Ruh that, because there are only a handful of ongoing, repeated malicious interference cases around the country at any given time, representing a tiny fraction of the amateur population, there is no need for the procedure suggested, the League has two responses: (1) it agrees with the factual premises asserted; and (2) the conclusions they draw beg the question. Surely enough, there are adequate enforcement procedures contained in the current Commission regulations and in the Communications Act of 1934 to address the problems associated with malicious interference in the Amateur Service. However, those procedures are not being invoked quickly, or at all, and as the direct result, the instances of malicious interference in a highly rule-compliant radio service spread like a virus. Any radio service comprising approximately 750,000 individuals will have the same problem, and it is a striking testimony to the high quality of the Commission's licensees that the problem is not far worse than it is. The actions of a few individuals have a significant effect on large numbers of rule compliant licensees, and the problem therefore is far greater than is indicated by the number of contributors. The League's petition addresses not procedural infirmities in the current rules, but their lack of utility under current and anticipated future

³ As to Kopetsky's fear that holding administrative hearings in Washington would entail prohibitive cost, the petition, at page 24, notes that there are ways of minimizing the impact on both the accused and the Auxiliary members submitting the materials. Testimony by speakerphone, use of deposition transcripts in lieu of live testimony, and the like, are reasonable procedures which could be used at the discretion of the presiding ALJ.

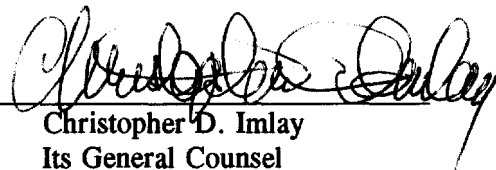
conditions. The desirability of maximum utilization of volunteers, and the ability of Administrative Law Judges to handle a few additional cases per year, offers a solution to a significant problem while reducing the administrative burden on two Commission bureaus. The League's petition is timely and the relief requested necessary.

Accordingly, the American Radio Relay League, Incorporated again requests that the Commission issue a Notice of Proposed Rulemaking at the earliest possible date, looking toward the adoption of rules as proposed therein.

Respectfully submitted,

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